

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

JAMES E. HOWARD, Chapter 11	)	
Trustee, Bangor and Aroostook	)	
Railroad Company and Van Buren	)	
Bridge Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Docket No. 04-mc-0056-B-S
	)	
CANADIAN NATIONAL RAILWAY	)	
COMPANY et al.,	)	
	)	
Defendants.	)	

**ORDER ON MOTION TO WITHDRAW REFERENCE**

SINGAL, Chief District Judge.

Before the Court is the Canadian National Railway Company’s Motion to Withdraw Reference (Docket # 1). Pursuant to 28 U.S.C. § 157(d), a district court shall grant a withdrawal of reference “if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” Id.

At issue in the pending motion is a five-count complaint filed by Trustee James Howard (the “Trustee”) against Canadian National Railway Company (“Canadian National”). Counts I and II of the Complaint allege claims of fraudulent transfer and seek to avoid those transfers. Count III seeks recovery of alleged preferential payments. Count IV seeks recovery of unauthorized post-petition payments. Finally, Count V seeks payment of various alleged debts owed to Bangor and Aroostook Railroad Company and Canadian American Railroad Company. The Bankruptcy Court ruled that Counts I-IV

presented core bankruptcy claims while categorizing Count V as non-core.

Canadian National argues that the Trustee's asserted claims are subject to mandatory withdrawal. In short, having considered the remaining claims in light of the First Circuit's recent ruling in Howard v. Surface Transp. Bd., 389 F.3d 259 (1st Cir. 2004), the Court does not find that the remaining claims present a case requiring mandatory withdrawal. Rather, the Court concludes that the current claims will not require "substantial consideration of nonbankruptcy federal statutes." In re Jackson Brook Institute, Inc., 280 B.R. 779, 782 (D. Me. 2002).

The prior adversary proceeding undoubtedly required consideration of the "laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d). However, the legal issues regarding the regulation of interstate commerce have been considered and resolved both in this court and on appeal to the First Circuit. See, e.g., Howard, 389 F.3d at 263-266, 270-71; Howard v. Canadian Nat'l Ry. Co., No. 03-cv-63-P-S, 2003 WL 22913296, at \*1 (D. Me. Nov. 18, 2003) (Order affirming the October 9, 2003 Recommended Decision). The issues that now remain for resolution in the current adversary proceeding are predominately core bankruptcy issues that do not involve substantial and material consideration of non-bankruptcy statutes. See In re Ponce Marine Farm, Inc., 172 B.R. 722, 724 (D.P.R. 1994) ("[M]andatory withdrawal of reference is proper only where resolution of the adversary proceeding involves substantial and material consideration of non-bankruptcy federal statutes.") (citations omitted).

With respect to Canadian National's alternative request for discretionary withdrawal, the Court finds Canadian National cannot meet its burden for demonstrating

cause for such a withdrawal. As another court in this district has previously explained, a court faced with a request for discretionary withdrawal considers factors such as: “judicial economy; whether withdrawal would promote uniformity of bankruptcy administration; reduction of forum shopping and confusion; conservation of debtor and creditor resources; expedition of the bankruptcy process; and whether a jury trial has been requested.” In re Envisionet Computer Services, Inc., 276 B.R. 1, 4 (D. Me. 2002) (quoting In re Larry's Apartment, 210 B.R. 469, 474 (D. Ariz. 1997)). In the pending action, the Court believes that judicial economy is best served by allowing the asserted claims, which consist of four core bankruptcy claims and only one claim that was determined by the Bankruptcy Court to be “non-core,” to proceed before the Bankruptcy Court. See In re Jackson Brook Institute, Inc., 280 B.R. at 782 (noting that when “determining judicial economy, courts weigh the preponderance of ‘core’ versus ‘noncore’ claims”). Moreover, all of the other listed factors similarly weigh heavily in favor of allowing the current claims to be resolved before the Bankruptcy Court.

Therefore, the Court DENIES Canadian National’s Motion to Withdraw Reference.

SO ORDERED.

/s/ George Z. Singal  
Chief United States District Judge

Dated this 23<sup>rd</sup> day of February 2005.

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**Defendant**

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V.

**Debtor**

**BANGOR AND AROOSTOOK  
RAILROAD CO**